

Message Text

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ACTION ARA-10

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TO SECSTATE WASHDC 4799

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 6272

E.O. 11652: GDS

TAGS: CI, PINS

SUBJECT: STATE OF SIEGE REDUCED ONE GRADE

REFS: (A) SANTIAGO AIRGRAM A-91 (B) SANTIAGO AIRGRAM A-181
DATED SEPTEMBER 25, 1974 (C) SANTIAGO 6207

1. SUMMARY: GOC ANNOUNCED REDUCTION IN STATE OF SIEGE FROM SECOND TO THIRD LEVEL ON SCALE OF FOUR STAGES, IN CONNECTION WITH SECOND ANNIVERSARY OF MILITARY COUP OF SEPTEMBER 11, 1973. DESPITE IMPRESSION GIVEN BY PRESIDENT, LEGAL EFFECT OF REDUCTION IS MINOR UNDER EXISTING LAW. EMPHASIS WAS PLACED ON FACT THAT MILITARY TRIBUNALS IN THIRD GRADE OF STATE OF SIEGE ARE TO OPERATE UNDER LESS SEVERE PEACETIME RULES AND WITH CIVIL COURT REVIEW. FACT IS THAT UNDER PRESENT LAW ALMOST ALL SIGNIFICANT OFFENSES OF POLITICAL NATURE ARE EXPRESSLY RESERVED FOR CONSIDERATION BY MILITARY TRIBUNALS ACTING UNDER STRICT TIME OF WAR RULES AND WITHOUT CIVIL REVIEW. GOVT COULD OF COURSE VERY EASILY MODIFY EXISTING LAW. END SUMMARY.

2. IN HIS SPEECH TO THE NATION ON SEPTEMBER 11, THE SECOND ANNIVERSARY OF THE MILITARY COUP OF 1973, PRES. PINOCHET ANNOUNCED REDUCTION OF STATE OF SIEGE FROM ITS SECOND LEVEL, "INTERNAL DEFENSE," TO ITS THIRD LEVEL, "INTERNAL SECURITY." (THERE ARE FOUR STATES INCLUDED
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IN LAW ISSUED BY PRESENT GOC A YEAR AGO.) PINOCHET

SAID: "THIS SIGNIFIES THAT EXCEPT FOR SOME ESPECIALLY SERIOUS OFFENSES AGAINST SECURITY OF STATE . . . JURISDICTION OF MILITARY TRIBUNALS WILL BE EXERCISED IN ACCORDANCE WITH PROCEDURES OF TIME OF PEACE AND NOT OF WAR. AS A CONSEQUENCE, WITH RESPECT TO JUDGMENTS ("SENTENCIAS"), APPROPRIATE PROCEDURES WILL BE IN EFFECT FOR APPEAL BEFORE THE MILITARY COURT (TOP MILITARY APPEAL COURT) AND FINALLY BEFORE THE SUPREME COURT."

3. PINOCHET NOTED THAT ONLY EFFECTIVE ACTION OF GOC AGAINST ORGANIZED EXTREMIST GROUPS HAD PERMITTED REDUCTION OF STATE OF SIEGE BY ONE GRADE. "BUT," HE ADDED, " WHILE THERE EXISTS ANY FORM OF SIGNIFICANT SUBVERSIVE ACTION, OPEN OR CLANDESTINE, WE HAVE THE OBLIGATION TO MAINTAIN THE NECESSARY RESTRICTIONS TO ENSURE SOCIAL PEACE AND IMPEDE THE RETURN OF CHAOS." HE ALSO SAID THAT A NEW "CONSTITUTIONAL ACT" WILL BE DRAFTED COVERING LEGAL RIGHTS AND STATES OF EMERGENCY.

4. AS EXPLAINED IN REFERENCES, REDUCTION OF STATE OF SIEGE TO THIRD LEVEL HAS EFFECT OF PLACING MILITARY TRIBUNALS UNDER "TIME OF PEACE" PROVISIONS OF CODE OF MILITARY JUSTICE, IN CONTRAST TO SECOND LEVEL JUST ENDED, DURING WHICH MORE RIGOROUS PROVISIONS OF "TIME OF WAR" RULED. UNDER WARTIME RULES, MILITARY TRIBUNALS MAY BE APPOINTED BY LOCAL COMMANDERS, NEED NOT CONTAIN TRAINED LEGAL PERSONNEL, APPLY HARSHER PENALTIES, AND ARE SUBJECT TO REVIEW ONLY OF MILITARY CHAIN OF COMMAND. UNDER PEACETIME RULES, THOSE TRIBUNALS ARE MORE FORMALLY ESTABLISHED BY HIGHER LEVELS OF COMMAND, TEND TO BE MORE PERMANENT AND THUS MORE EXPERIENCED, MUST HAVE CERTAIN NUMBERS OF TRAINED LEGAL PERSONNEL, AND ARE LIMITED TO IMPOSITION OF LESSER SENTENCES. THEY ARE ALSO SUBJECT TO REVIEW AND APPEAL PROCEDURES INVOLVING A "MARTIAL COURT" (LIKE US MILITARY COURT OF APPEALS) WHICH HAS BOTH MILITARY AND CIVILIAN JUDGES, AND FINALLY THE SUPREME COURT OF CHILE. UNDER BOTH CIRCUMSTANCES, AS INDEED IN COMPLETELY NORMAL LEGAL STATES, CHILEAN LAW PROVIDES FOR MILITARY CONFIDENTIAL

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JUSTICE JURISDICTION OVER CIVILIANS FOR A BROAD RANGE OF OFFENSES.

5. LAST MAY THE GOC ISSUED A DECREE LAW (DL 1009 - REF AIRGRAM A) WHICH EXTENSIVELY AMENDED THE BASIC 1958 NATIONAL SECURITY LEGISLATION. THE DL MODERNIZED THE BASIC LAW BY ADDING SUCH CRIMES AS HIJACKING AND POLITICAL KIDNAPPING TO LIST OF NATIONAL SECURITY OF-

FENSES. DL ALSO DEFINED NEW OFFENSES -- SUCH AS CARRYING PROPAGANDA WHICH URGES OVERTHROW OF GOVERNMENT, AND INVOLVEMENT IN COMMUNICATION OF INFORMATION CONCERNING PREPARATION OF ANY NATIONAL SECURITY OFFENSE. AND DL AMENDED SEVERAL PROVISIONS OF 1958 LAW TO MAKE IT MORE INCLUSIVE AND TO INCREASE PENALTIES.

6. DL 1009 IN ADDITION, FOR THE FIRST TIME DEFINED LEGAL PROVISIONS TO BE IN EFFECT AT THIRD AND FOURTH LEVELS OF STATE OF SIEGE. A DISTINCTION BETWEEN SECOND AND THIRD LEVEL IS CHANGE FROM WARTIME TO PEACETIME RULES IN MILITARY TRIBUNAL PROCEDURES. NEW DL, HOWEVER, MADE MAJOR RESERVATIONS, IN THAT NEW OFFENSES SUCH AS HIJACKING AND POLITICAL KIDNAPPING WOULD STILL BE HANDLED UNDER WARTIME RULES REGARDLESS OF REDUCTION IN STATE OF SIEGE, AS WOULD BE OFFENSES LISTED UNDER CERTAIN ARTICLES OF THE 1958 NATIONAL SECURITY LAW. LATTER ARTICLES IN TURN INCLUDE WIDE RANGE OF OFFENSES -- FROM RISING AGAINST GOVERNMENT, THROUGH INCITING INDISCIPLINE IN THE ARMED FORCES AND POLICE, AND ORGANIZAING OR SUPPORTING IN ANY WAY ATTACKS AGAINST PUBLIC AUTHORITY, DOWN TO DISSEMINATION BY ANY MEANS, IN CHILE OR TO THE EXTERIOR OF TENDENTIOUS OR FALSE INFORMATION DESIGNED TO HARM THE GOVERNMENT, CONSTITUTIONAL ORDER, OR NATIONAL SECURITY. THERE ARE A NUMBER OF OTHER OFFENSES, BROADEST OF WHICH MAY BE SUPPORT OF DOCTRINES WHICH PREACH VIOLENCE AS A MEANS OF POLITICAL, ECONOMIC OR SOCIAL CHANGE.

7. THE FOREGOING OFFENSES, PLUS OTHERS NOT LISTED HERE BUT OF THE SAME TYPE, WILL BE TRIED UNDER WARTIME RULES DURING PERIOD OF GRADE THREE OF STATE OF SIEGE, CONFIDENTIAL

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FOR EXAMPLE, A MILITARY ZONE COMMANDER COULD, AS WE READ THE LAW, CONTINUE TO APPOINT AN AD HOC TRIBUNAL, CONTAINING NO PERSONNEL WITH LEGAL TRAINING, TO TRY A PERSON WHO HAS DISTRIBUTED A PAMPHLET ADVOCATING COMMUNISM. THIS COURT COULD IMPOSE A SENTENCE FROM THE MORE SEVERE WARTIME PROVISIONS OF THE MILITARY CODE. ITS FINDING AND SENTENCE WOULD BE REVIEWED BY THE APPOINTING COMMANDER AND BY HIS MILITARY SUPERIORS IN THE CHAIN OF COMMAND, UP TO THE CINC OF THE PARTICULAR MILITARY SERVICE INVOLVED. BUT THERE WOULD BE NO CIVILIAN COURT REVIEW.

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

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8. IN CONTRAST, OTHER OFFENSES WILL BE PROCESSED UNDER PEACETIME RULES OF MILITARY TRIBUNALS. THIS MIGHT INCLUDE SIMPLE POSSESSION OF AN UNREGISTERED FIREARM, WHERE THERE IS NO CHARGE THAT THE POSSESSOR USED OR INTENDED TO USE IT FOR "POLITICAL" PURPOSES. THE OFFENDER WOULD BE TRIED BY A COURT HAVING TRAINED LEGAL PERSONNEL, BE SUBJECT TO LESS SEVERE PENALTIES, AND HAVE THE RIGHT OF APPEAL THROUGH THE MILITARY JUSTICE SYSTEM AND ULTIMATELY TO THE SUPREME COURT. ALSO SPECIFICALLY INCLUDED UNDER PEACETIME RULES ARE INSULTS TO THE FLAG, THE NATIONAL SEAL, AND TO THE PRESIDENT AND OTHER PUBLIC OFFICERS.

9. IT IS NOT CLEAR WHAT EFFECT REDUCTION IN LEVEL OF STATE OF SIEGE HAS ON HABEAS CORPUS (AMPARO). SINCE THE SUPREME COURT HAS CONSISTENTLY RULED THAT CIVILIAN COURTS HAVE NO AUTHORITY TO INTERVENE IN STATE OF SIEGE CASES, IT PRESUMABLY WOULD FIND NO GROUNDS FOR INTERVENTION SIMPLY BECAUSE OF THE REDUCTION OF A GRADE IN THE STATE OF SIEGE. HOWEVER, COURT MIGHT HOLD THAT IT HAS AUTHORITY TO APPROVE AMPARO, FOR EXAMPLE, IN CASES WHERE IT HAS REVIEW AUTHORITY. NO GOC OFFICIAL OR CHILEAN ATTORNEY HAS BEEN ABLE TO CLARIFY THIS POINT FOR US; ALL HAVE SUGGESTED THAT WE WILL HAVE TO WAIT AND SEE WHAT THE COURT WILL DO.

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10. COMMENT: FEW CHILEANS UNDERSTAND CHANGES IN STATE OF SIEGE LEVELS OR RECENT AMENDMENTS IN NATIONAL SECURITY LEGISLATION. BASED ON WHAT PINOCHET SAID AND WHAT PRESS REPORTED, MOST PEOPLE WILL EXPECT THAT MOST "POLITICAL" OFFENSES, EXCEPT GENERALLY REPUDIATED CRIMES SUCH AS TERRORISM, SABOTAGE, AND POLITICAL KIDNAPPING, WILL BE SUBJECT TO CIVIL REVIEW. IF PRESENT LAW IS FOLLOWED, HOWEVER, IT APPEARS THAT MOST SIGNIFICANT POLITICAL OR SECURITY OFFENSES WILL CONTINUE TO BE TRIED UNDER WARTIME RULES, AND WITHOUT CIVIL REVIEW.

11. THIS ENTIRE AREA OF LEGISLATION IS OBSCURE, AND EMBASSY DOES NOT KNOW RATIONALE FOR GOC ACTIONS. WHEN PERIOD OF FORMAL MOVEMENT TOWARD NORMALIZATION BEGAN A YEAR AGO, GOVERNMENT INTRODUCED NEW SUBDIVISIONS OF ALREADY EXISTING (AS PROVIDED BY CONSTITUTION OF 1925) LEGAL STATES OF EMERGENCY, THUS BRINGING A SEMBLANCE OF ORDER OUT OF VAGUENESS OF PRIOR LEGISLATION. LEGISLATION ON STATES OF EMERGENCY, HOWEVER, IS STILL DRAWN SO THAT GOC HAS BROAD PRACTICAL DISCRETION ON INTERPRETATION OF ITS POWERS. EXISTENCE OF MORE SPECIFIC LEVELS OF STATES OF EMERGENCY, INCLUDING THE FOUR LEVELS OF THE STATE OF SIEGE, DOES OFFER GOC OPPORTUNITY (WHICH IT TOOK AT BOTH ANNIVERSARIES OF 1973 COUP) TO PROCLAIM REDUCTION IN STATE OF SIEGE WITHOUT BASIC LOSS OF EMERGENCY POWERS AVAILABLE TO IT, OR REMOVAL OF BROAD CATEGORY OF "POLITICAL" OFFENSES FROM EXCLUSIVE JURISDICTION OF MILITARY JUSTICE SYSTEM. OF COURSE, IF GOVERNMENT DESIRES TO GIVE CIVIL COURTS WIDE REVIEW AUTHORITY SUGGESTED IN PINOCHET SPEECH, IT HAS EXECUTIVE AUTHORITY TO AMEND ITS LEGISLATION BY STROKE OF A PEN.

12. LEADING NEWSPAPER "EL MERCURIO" EVIDENTLY IS ALSO WONDERING ABOUT REAL EFFECT OF REDUCTION. IN FRONT PAGE ARTICLE SEPTEMBER 14 IT REPORTED EFFORTS TO GET COMMENTS ON CHANGE FROM TOP LEGAL OFFICIALS: SUPREME COURT CHIEF JUSTICE EYZAGUIRRE CALLED IT "IMPORTANT CHANGE" SIGNIFYING ENTRY INTO PERIOD OF GREATER NORMALITY. HE REPEATED PRESIDENTIAL CLAIM THAT CIVIL REVIEW, ETC., IS NOW IN EFFECT "EXCEPT FOR SOME OFFENSES," AND APPARENTLY SAID NOTHING MORE. MIN JUSTICE SCHWEITZER
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AND HEAD OF MARTIAL COURT REPORTEDLY DECLINED TO COMMENT.
POPPER

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